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LEGAL UPDATE

October 13, 2020

To: Superintendents, Member School Districts (K-12)
From: Jennifer Henry, Associate General Counsel *J.H.*
Subject: Court of Appeal Upholds Certificated Employee’s Dismissal
over Facebook Comments
Memo No. 61-2020

On August 11, 2020, the Court of Appeal upheld a certificated employee’s dismissal for Facebook comments considered derogatory to students of color and immigrants, which were deemed “immoral,” rendering her “unfit to teach.” (*Crawford v. Commission on Professional Competence of the Jurupa Unified School District* (2020) 53 Cal.App.5th 327.)

Crawford was a guidance counselor (certificated) at Jurupa Unified School District (“District”), where 90 percent of the student body is Hispanic/Latino. In February 2017, a large portion of the District’s students boycotted school as part of the “Day Without Immigrants” protest. On a colleague’s Facebook post that criticized the boycotting students and immigrants, Crawford commented that without the boycotting students at school, the “cafeteria was much cleaner” and there were “no discipline issues today. More, please.” After several students responded with disappointment to her “belittl[ing]” comments, she responded with: “get over yourselves.” The Facebook post “went viral,” and nationwide public outcry against her and the District ensued, including graffiti, further walkouts, and multiple complaints. After placing Crawford on paid administrative leave for several months, the District dismissed her for “immoral” conduct showing she was “evidently unfit for service” under Education Code Section 44932.

Crawford appealed her dismissal to the District’s Commission on Professional Competence (“CPC”). After its hearing, the CPC found that Crawford’s comments negatively impacted the students, the District, and the community.

The Court of Appeal upheld her dismissal, stating that the term “immoral conduct” is “so broad and vague” that the proper criteria to use is “fitness to



teach.” The Court analyzed the seven *Morrison* factors which are applied to determine whether unprofessional conduct demonstrates unfitness to teach. The seven factors, and how the Court applied them, is as follows:

1. Adverse effect of conduct on students or teachers: The District received 51 email complaints, and three students testified at the CPC hearing how the demeaning comments made them no longer consider Crawford a role model. The comments also brought significant negative media attention to the school.
2. Proximity in time: The District sought to dismiss her within months of the incident.
3. Type of teaching certificate held: As a guidance counselor with a teaching credential, comments denigrating students that are immigrants or support immigrants negatively impacted her ability to act as a counselor or teacher at the school.
4. Any extenuating or aggravating circumstances: The Court found none.
5. Praiseworthiness or blameworthiness of motives: The Court rejected Crawford’s contention that she thought the Facebook post was private, for teachers only, because she continued to post responses after she knew her comments were being viewed by the broader public. Significantly, the fact that she failed to apologize until the hearing, and showed no remorse, indicated to the Court that she lacked insight and empathy.
6. Likelihood of recurrence: Due to her lack of remorse, and belated apology, the Court found that similar questionable conduct may occur.
7. Extent to which discipline may have an adverse impact on the teacher’s constitutional rights: The Court declined to resolve whether there was evidence to support this factor, because it found that enough of the other factors weighed against her.

In upholding the dismissal, the Court stated that a teacher could be discharged where her conduct “has gained sufficient notoriety so as to impair [her] on-campus relationships.” She was not dismissed simply because members of the public thought she was unfit, or because her comments were “controversial.” She was dismissed because of the adverse effect her comments had on her relationship with students and school staff. The Court also rejected Crawford’s definition of “immoral” to mean only criminal activity or using profanity or racial epithets.

This case does not give a carte blanche to dismiss employees who post controversial comments on social media or achieve “notoriety” in the public eye. However, it does provide some clarification of what “immoral conduct” rendering a certificated employee unfit to teach could look like. We recommend that you determine on a case-by-case basis whether employee conduct, especially conduct on social media, rises to the level of “immoral conduct” meriting dismissal.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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